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| EXAMINER |
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3621

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06/06/2011

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                        |                       |  |
|------------------------------|------------------------|-----------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b>   |  |
|                              | 10/575,964             | BALDISCHWEILER ET AL. |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>       |  |
|                              | CHRYSTINA ZELASKIEWICZ | 3621                  |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 February 2011.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 and 9-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### **Continued Examination Under 37 CFR 1.114**

1. A request for continued examination (RCE) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 4, 2011 has been entered.

### **Acknowledgements**

2. This action is in reply to the RCE filed on February 4, 2011
3. Claim 8 was previously cancelled.
4. Claims 26-27 are added.
5. Claims 1-7 and 9-27 are pending.
6. Claims 1-7 and 9-27 have been examined.
7. This Office Action is given Paper No. 20110531 for references purposes only.

### **Claim Rejections - 35 USC § 112, 2<sup>nd</sup> paragraph**

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1-7, 9-16, and 26-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

10. Claim 1 recites the limitation "directly or indirectly by a personal electronic device of the owner." This phrase is vague and indefinite because "a personal electronic device of the owner" could refer to "the personal electronic payment device" or a new "personal electronic device of the owner." Therefore, for purposes of applying the prior art, Examiner will assume the latter.

11. Claims 26-27 state "and/or." This phrase is vague and indefinite because it can mean either "and" or "or." For purposes of applying the prior art, Examiner will interpret the phrase as "or."

12. Examiner finds that because the claims are indefinite under 35 U.S.C. §112, 2<sup>nd</sup> paragraph, it is impossible to properly construe claim scope at this time. However, in accordance with MPEP §2173.06 and the USPTO's policy of trying to advance prosecution by providing art rejections even though these claims are indefinite, the claims are construed and the prior art is applied as much as practically possible.

### **Claim Rejections - 35 USC § 103**

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made

to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 1-4, 6-7, 9-22, and 24-27 are rejected under 35 U.S.C. §103(a) as being unpatentable over Hurta et al. (US 5,602,919) in view of Tuttle (US 6,013,949).

Claims 1, 17

15. Hurta discloses the following limitations:

- a. at a first time (t1) (phase A, see C8 L1-27, figure 5), receiving a data record (transfer data representing toll amount, see C5 L14-20) assigned to the service (paying tolls, see abstract) from an owner's personal electronic payment device (user's smartcard **66**, see abstract, C2 L59 – C3 L2), directly or indirectly by a personal electronic device of the owner;
- b. deleting or invalidating the data record (pay the toll, subtract running total, see C6 L35-51) completely or with regard to the data derived therefrom in the electronic intermediate carrier if the service was rendered correctly (went through tollbooth successfully, see C6 L35-51), so as to prevent the data record from being used several times for payment transactions.

16. Hurta does not disclose the following limitations:

- c. At a second time... correctly;
- d. Wherein the electronic... device.

17. Tuttle teaches the following limitations:

e. at a second time (t2) (upon reaching shipment destination, see C6 L35-49) which is later than the first time (t1), checking the data record or data derived (received data, see C6 L35-49) therefrom in the electronic intermediate carrier (RFID chip, see C6 L35-49) by a receiving device of the payee (interrogator, see C6 L35-49) as to whether the service was rendered correctly (item of shipment put in hands of desired recipient, see C6 L35-49);

f. wherein the electronic intermediate carrier (RFID chip, see figure 1, C6 L35-49) is formed as a transferable unit physically separate from the owner's personal electronic payment device or personal electronic device.

18. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the smartcard-based transponder system of Hurta with the toll subtraction of Tuttle because 1) a need exists for a smartcard-based transponder that can accept money from a smartcard (Hurta C2 L1-33); and 2) a need exists for an improved RFID device that is not expensive but highly reliable (Tuttle C2 L1-27). Checking the data record to determine service was rendered correctly, wherein the carrier is a transferable unit, will ensure that the item of shipment is most ensuredly and efficiently put in the hands of the desired recipient at the earliest possible time (Tuttle C6 L35-49).

19. Alternatively, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the smartcard-based transponder system of Hurta with the toll subtraction of Tuttle since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same

function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

#### Claim 2

20. Hurta in view of Tuttle discloses all the limitations above. Furthermore, Hurta discloses the following limitations:

- g. transmitting the data record (transfer data for toll, see C5 L14-20) or data derived therefrom from the electronic intermediate carrier (transponder, see C6 L3-51) to the payee (interrogator of toll plaza, see C6 L3-51).

#### Claim 3

21. Hurta in view of Tuttle discloses all the limitations above. Furthermore, Hurta discloses the following limitations:

- h. securing the data record cryptographically (encrypted MAC, see C6 L28-34).

#### Claim 4

22. Hurta in view of Tuttle discloses all the limitations above. Furthermore, Hurta discloses the following limitations:

- i. the data record depends on at least one of individual data of the electronic intermediate carrier (transponder identity or certificate, see C6 L3-51) and a consecutive character string.

Claim 6

23. Hurta in view of Tuttle discloses all the limitations above. Furthermore, Hurta discloses the following limitations:

- j. the data record depends on personal data (PIN, see C8 L5-13) of the owner of the personal electronic payment device.

Claim 7

24. Hurta in view of Tuttle discloses all the limitations above. Furthermore, Hurta discloses the following limitations:

- k. the data record represents at least one amount of money or at least one unit of value (payment method, see C6 L3-19 ).

Claim 9

25. Hurta in view of Tuttle discloses all the limitations above. Hurta does not disclose the following limitations:

- l. the electronic intermediate carrier... second time (t2).

26. Tuttle teaches the following limitations:

- m. the electronic intermediate carrier (RFID stamp, see C2 L28-54) is not in the possession of the owner (mailer of stamp, inherent) of the personal electronic payment device at the second time (t2) (item arrives at shipment destination, see C6 L20-49).



27. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the smartcard-based transponder system of Hurta with the carrier not in possession of the owner of the device of Tuttle because 1) a need exists for a smartcard-based transponder that can accept money from a smartcard (Hurta C2 L1-33); and 2) a need exists for an improved RFID device that is not expensive but highly reliable (Tuttle C2 L1-27). Having the carrier not in possession of the owner of the device allows for the carrier to reach its destination point (Tuttle C6 L35-49).

#### Claim 10

28. Hurta in view of Tuttle discloses all the limitations above. Furthermore, Hurta discloses the following limitations:

- n. the data transmission is effected contactlessly (wireless fashion, see C3 L20-38) at least one of the first time (t1) and the second time (t2).

#### Claim 11

29. Hurta in view of Tuttle discloses all the limitations above. Hurta does not disclose the following limitations:

- o. Using the cashless... mail.

30. Tuttle teaches the following limitations:

- p. using the cashless payment transaction for paying postage for mail (postage stamps and mailing labels, see C2 L18-28).

31. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the smartcard-based transponder system of Hurta with the postage stamps of Tuttle because 1) a need exists for a smartcard-based transponder that can accept money from a smartcard (Hurta C2 L1-33); and 2) a need exists for an improved RFID device that is not expensive but highly reliable (Tuttle C2 L1-27). Using the transaction for paying postage for mail allows for electrically powered postage stamps and mailing labels (Tuttle C2 L18-28).

#### Claim 12

32. Hurta in view of Tuttle discloses all the limitations above. Hurta does not disclose the following limitations:

q. The intermediate... mail.

33. Tuttle teaches the following limitations:

r. the intermediate carrier (RFID stamp, see C2 L28-54) is fastened detachably to mail (mail, see C2 L28-48).

34. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the smartcard-based transponder system of Hurta with the postage stamps of Tuttle because 1) a need exists for a smartcard-based transponder that can accept money from a smartcard (Hurta C2 L1-33); and 2) a need exists for an improved RFID device that is not expensive but highly reliable (Tuttle C2 L1-27). Having the carrier fastened to mail allows for electrically powered postage stamps and mailing labels (Tuttle C2 L18-28).

Claim 13

35. Hurta in view of Tuttle discloses all the limitations above. Hurta does not disclose the following limitations:

s. Information... carrier.

36. Tuttle teaches the following limitations:

t. information on at least one of the time and place of the delivery (destination address, see C2 L28-48) of the mail is stored in the electronic intermediate carrier.

37. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the smartcard-based transponder system of Hurta with the destination address of Tuttle because 1) a need exists for a smartcard-based transponder that can accept money from a smartcard (Hurta C2 L1-33); and 2) a need exists for an improved RFID device that is not expensive but highly reliable (Tuttle C2 L1-27). Storing information on the time and place of the delivery allows for electrically powered postage stamps and mailing labels (Tuttle C2 L18-28).

Claim 14

38. Hurta in view of Tuttle discloses all the limitations above. Furthermore, Hurta discloses the following limitations:

u. visualizing information (show amount last debited, see C4 L56-67) in connection with the data record on the intermediate carrier.

Claim 15

39. Hurta in view of Tuttle discloses all the limitations above. Furthermore, Hurta discloses the following limitations:

- v. Fastening the intermediate carrier (transponder, see C3 L39-52) detachably to an object (vehicle, see C3 L39-52).

Claim 16

40. Hurta in view of Tuttle discloses all the limitations above. Furthermore, Hurta discloses the following limitations:

- w. transmitting from the intermediate carrier to the personal electronic payment device data on the functionality required for transmitting a data record from the personal electronic payment device (smartcard, see C5 L14 - C6 L51) or a personal device to the intermediate carrier (transponder, see C5 L14 - C6 L51).

Claim 18

41. Hurta in view of Tuttle discloses all the limitations above. Furthermore, Hurta discloses the following limitations:

- x. The electronic intermediate carrier is formed as a transponder (transponder, see C3 L39-52).

Claim 19

42. Hurta in view of Tuttle discloses all the limitations above. Furthermore, Hurta discloses the following limitations:

- y. the electronic intermediate carrier (transponder, see C3 L39-52) is set up for repeated transmission of data records (paying tolls on road, see abstract, C3 L1-20).

#### Claim 20

43. Hurta in view of Tuttle discloses all the limitations above. Furthermore, Hurta discloses the following limitations:

- z. the functionality required for transmitting a data record (toll amount, see C4 L56 – C5 L13) from the personal means of payment (smartcard, see C4 L56 – C5 L13) or a personal device to the intermediate carrier (transponder, see C4 L56 – C5 L13) is stored as an application (application, see C4 L56 – C5 L13) on the electronic intermediate carrier.

#### Claim 21

44. Hurta in view of Tuttle discloses all the limitations above. Furthermore, Hurta discloses the following limitations:

- aa. the electronic intermediate carrier (transponder, see C3 L39-52) has a display device (LCD **74**, see C4 L56-67) for visualizing information in connection with a data record (amount of money last debited, see C4 L56-67).

Claim 22

45. Hurta in view of Tuttle discloses all the limitations above. Furthermore, Hurta discloses the following limitations:

bb. the personal device (smartcard, see C4 L56-67) is an intelligent device having a reading device for near field communication with a transponder (transponder, see figure 4, C4 L56-67).

Claim 24

46. Hurta in view of Tuttle discloses all the limitations above. Furthermore, Hurta discloses the following limitations:

cc. the personal electronic payment device is formed as a chip card (smartcard, see C4 L56-67), or as a security module of a mobile telephone.

Claim 25

47. Hurta in view of Tuttle discloses all the limitations above. Furthermore, Hurta discloses the following limitations:

dd. the receiving device (interrogator, see C3 L20-38) has a checking device (antenna, see C4 L43-55) as well as at least one additional component (central office computer, see C3 L20-38) which provides reference information (accounting information, see C3 L20-38) for checking a data record.

Claims 26, 27

48. Hurta in view of Tuttle discloses all the limitations above. Hurta does not disclose the following limitations:

ee. Prior to... payee.

49. Tuttle teaches the following limitations:

ff. prior to the first time (t1), loading the data record (received data, see C6 L35-49) with data (owner's name ID number, C6 L19-34), programs, and/or keys from a previous owner initiated log in with the payee.

50. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the smartcard-based transponder system of Hurta with the data record of Tuttle because 1) a need exists for a smartcard-based transponder that can accept money from a smartcard (Hurta C2 L1-33); and 2) a need exists for an improved RFID device that is not expensive but highly reliable (Tuttle C2 L1-27). The data record allows for electrically powered postage stamps and mailing labels and tracking of the item of shipment (Tuttle C2 L18-28, C6 L35-49).

51. Claims 5 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hurta, in view of Tuttle, and further in view of Official Notice.

#### Claim 5

52. Hurta in view of Tuttle discloses all the limitations above. Furthermore, Hurta discloses the following limitations:

gg. data record with an encrypted MAC, using an encryption method such as DES (see C6 L3-51).

53. Hurta in view of Tuttle does not disclose the following limitations:

hh. encrypting the data record with a public key of the payee.

54. Examiner takes **Official Notice** that it is old and well known in the encryption arts that data may be encrypted by a public key.

55. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the smartcard-based transponder system of Hurta, in view of Tuttle, to include encrypting the data record with a public key of the payee because Hurta already teaches encrypting the data record for security purposes (see Hurata C6 L3-51). Using the payee's public key will ensure proper authorization between the transponder and interrogator (see Hurta C6 L3-51).

#### Claim 23

56. Hurta in view of Tuttle discloses all the limitations above. Furthermore, Hurta discloses the following limitations:

ii. the intelligent device is a smartcard (smartcard, see C4 L56-67).

57. Hurta in view of Tuttle does not disclose the following limitations:

jj. the personal electronic payment device is a mobile telephone.

58. Examiner takes **Official Notice** that it is old and well known in the computer arts that a smartcard can be utilized with a mobile telephone.



59. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the smartcard-based transponder system of Hurta, in view of Tuttle, to include the personal electronic payment device as a mobile telephone because a mobile telephone can perform similar functions as the smartcard, such as read, write, and store information (see Hurta C1 L60-67).

### **Response to Arguments**

60. Applicant argues that Hurta in view of Moritsu does not disclose “an electronic intermediate carrier formed as a transferable unit physically separate from the owner’s personal electronic payment device” because the transponder in Hurta is not physically forwarded from a first place to a second place to cause payment (RCE p 10-11).

kk. Examiner disagrees. First, claims 1 and 17 do not require the transponder to be physically forwarded. Rather, these claims only recite that “the electronic intermediate carrier is formed as a transferable unit physically separate from the owner’s personal electronic payment device or personal electronic device.” In other words, there is no “forwarding” step.

ll. Second, the transponder of Hurta is formed as a transferable unit physically separate from the device because the transponder is physically capable of being transferred out of the car. Whether the transponder actually transfers is moot because that limitation is missing from the claim.

mm. Additionally, Tuttle teaches the electronic intermediate carrier (RFID chip, see figure 1, C6 L35-49) is formed as a transferable unit physically separate from the owner's personal electronic payment device or personal electronic device.

### **Claim Interpretation**

61. Unless expressly noted otherwise by Examiner, Examiner maintains her position on claim interpretation as noted in the December 7, 2010 Final Office Action, Paragraph No. 51 (Paper No. 20101203).

62. After another careful review of the original specification and unless expressly noted otherwise by Examiner, Examiner maintains her position that Applicant is not his own lexicographer. See MPEP § 2111.01 IV.

63. After review of the RCE claim amendments filed February 4, 2011, Examiner finds that because the examined claims recite neither "step for" nor "means for," the examined claims fail Prong (A) as set forth in MPEP §2181 I. Because all examined claims fail Prong (A), Examiner concludes that all examined claims do not invoke 35 U.S.C. §112, 6<sup>th</sup> paragraph. See also Ex parte Miyazaki, 89 USPQ2d 1207, 1215-16 (B.P.A.I. 2008) (precedential).

64. For compact prosecution purposes and should Applicant overcome the prior art rejections noted above, Applicant is reminded that optional or conditional elements do not narrow the claims because they can always be omitted. See *e.g.* MPEP §2106 II C.: "Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or

claim limitation. [Emphasis in original.]; and *In re Johnston*, 435 F.3d 1381, 77 USPQ2d 1788, 1790 (Fed. Cir. 2006) ("As a matter of linguistic precision, optional elements do not narrow the claim because they can always be omitted.").

nn. Specifically, claim 1 recites "deleting or invalidating the data record... *if* the service was rendered correctly." Similarly, claim 17 recites "invalidate or delete the data record... *if* the service was rendered correctly."

65. In light of Applicant's choice to pursue product claims (claims 17-25 and 27), Applicant is reminded that functional recitation(s) using the word and/or phrases "for", "adapted to", or other functional language (*e.g.* see claim 17 which recites "arranged to") have been considered but are given little patentable weight because they fail to add any structural limitations and are thereby regarded as intended use language. To be especially clear, all limitations have been considered. However, a recitation of the intended use of the claimed product must result in a structural difference between the claimed product and the prior art in order to patentably distinguish the claimed product from the prior art. If the prior art structure is capable of performing the intended use, then it reads on the claimed limitation. *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) ("The manner or method in which such a machine is to be utilized is not germane to the issue of patentability of the machine itself."); *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). See also MPEP §§ 31.06 II (C.), 2114 and 2115. Unless expressly noted otherwise by Examiner, the claim interpretation principles in the paragraph apply to all examined claims currently pending.

### **Conclusion**

66. Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from Examiner should be directed to Chrystina Zelaskiewicz whose telephone number is 571.270.3940. Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Fischer can be reached at 571.272.6779.

67. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> <<http://pair-direct.uspto.gov>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866.217.9197 (toll-free).

/Chrystina Zelaskiewicz/  
Examiner, Art Unit 3621  
May 31, 2011